NG HOCK CHENG

v.

PENGARAH AM PENJARA AND 2 ORS.

HIGH COURT MALAYA, TAIPING
DATO' HJ. ABDUL MALIK BIN HJ. ISHAK J
[CIVIL SUIT NO. 21-2 OF 1992]
31 DECEMBER 1994

***ADMINISTRATIVE LAW**: Plaintiff a government servant - Plaintiff declared himself a bankrupt in 1986 - Plaintiff asked to show cause why disciplinary action should not be taken against him - Plaintiff replying to show cause letter - Plaintiff dismissed from government service - Plaintiff challenging dismissal - Whether plaintiff was given an opportunity to reply to all the charges levied against him - Whether all the proper procedures were followed in reaching the decision to dismiss the plaintiff.*

The plaintiff was the Chief Storekeeper at the detention camp at Kamunting, Taiping and had been in government service for 28 years. The plaintiff was indebted to creditors and in 1986 he voluntarily made himself a bankrupt.

Subsequent to his bankruptcy, the Suruhanjaya Perkhidmatan Awam (SPA) acting pursuant to the powers vested in them decided to take disciplinary action against the plaintiff with a view to dismissal under the General Orders. In due course the plaintiff was dismissed from government service.

Before the Court, it was contended that the plaintiff's dismissal was wrongful, unreasonable and unjustified and the plaintiff sought to quash the decision of the SPA.

Held:

[1] The plaintiff had admitted in cross-examination that the SPA had given him a opportunity to reply to all the charges levied against him. The plaintiff further agreed that the SPA did not infringe any of his rights and that his dismissal was done *bona fide.*

[2] The plaintiff's Counsel's submission on the effects of the decision in *Bolton v. Law Society* overlooked the fact that the SPA had in their deliberations considered the lengthy written representation and the letter of appeal where the plaintiff poured out his grievances and pleaded for mercy. *Bolton's* case cannot be used as a *carte blanche* to interfere with the sentence of an inferior tribunal as the facts here are poles apart from the facts in *Bolton's* case.

[3] The plaintiff as a government servant had borrowed massively and had failed to report the extent of his indebtedness to his superior and, on his own volition, had himself declared a bankrupt, conduct which would bring the public service into disrepute and which was in breach of paragraphs 4(2)(d), 4(2)(g), 4(2)(f) and 4(2(i) of the General Orders.

[4] The words "reasonable opportunity of being heard" in the context of the rules of natural justice or in the context of paragraph 23 of the General Orders or in the context of Article 135(2) of the Federal Constitution does not give the plaintiff the right to be heard orally. In any event there was no evidence that the plaintiff demanded an oral hearing before he was dismissed by the SPA.

[5] The defendants have observed the *audi alteram partem* rule. The charges were conveyed to the plaintiff and the plaintiff was afforded the right to reply in writing and after having

deliberated on that reply the defendants decided to dismiss the plaintiff. This was not the only opportunity afforded to the plaintiff. The plaintiff's appeal letter was tabled before the defendants and a second deliberation took place which ultimately confirmed the dismissal of the plaintiff.

[Plaintiff's case dismissed with costs].

Cases referred to:
Bolton v. Law Society [1994] 1 WLR 512 ***(dist)***
Local Government Board v. Arlidge [1915] AC 120 ***(refd)***
Kavanagh v. Chief Constable of Devon & Anor. [1974] 1 QR 624 ***(refd)***
Jeff v. New Zealand Diary Productions and Marketing Board [1967] 1 AC 551 ***(refd)***
Najar Singh v. Government of Malaysia [1974] 1 MLJ 138 & [1974] 1 MLJ 138 & [1976] 1 MLJ 203 ***(refd)***
Attorney-General v. Ryan [1980] AC 718 ***(refd)***
Surinder Singh Kanda v. Government of the Federation of Malaya [1962] MLJ 169 ***(refd)***
Ridge v. Baldwin [1964] AC 40 ***(refd)***

Legislation referred to:
Bankruptcy Act, 1967 (Act 360)
Federal Constitution Art. 135(2), (1)

For the plaintiff - Sri A. Selvarajah; M/s. Selvarajah & Nirmala Devi
For the defendants - Haji Zainol Rashid bin Hussain, SFC

JUDGMENT

Hj. Abdul Malik bin Hj. Ishak J:

The plaintiff entered Government service way back in 1960, to be precise on 1 July 1960 and eventually rose up the rank to be the Chief Storekeeper of the detention camp at Kamunting, Taiping, Perak. He had, according to him, served the Government service dutifully for twenty eight (28) years prior to his dismissal. By a twist of misfortune he had himself declared as a bankrupt in 1986. He explained that he was indebted to his creditors in an attempt to help his late father's ailing bicycle business. He borrowed massively and he was fortunate that his creditors did not harass nor drag him to Court. But alas, this piece of evidence runs counter to para. 4 of his statement of claim where it shows that upon the death of his father, the creditors went after him short of dragging him to Court. The relevant passage in para. 4 of his statement of claim reads as follows:

> Di atas kematian bapanya, pemiutang mula memeras plaintif akan jumlah pinjamannya dan lain-lain wang pendahuluan dan mula menggangu plaintif.

The plaintiff testified that he sought the help of his Head of Department, one Dato Ibrahim bin Hj. Mohd ("Dato Ibrahim") and he was advised to declare himself as a bankrupt. Dato Ibrahim testified on behalf of the plaintiff and he confirmed the plaintiff's version but he proceeded to say, and this must surely be crucial to the plaintiff's case, that: "Mengikut General Orders, kerana plaintif berhutang banyak lebih daripada 6 bulan gaji, kesnya akan dirujuk kepada badan Tatatertib untuk demotion atau dismissal." In due course, the plaintiff proceeded to the Official Assignee's Office in Ipoh, Perak and upon paying the relevant stamp and processing fees, the procedure to declare himself as a bankrupt was put into motion. Thus, on 12 April 1986 before the High Court, Ipoh, Perak the plaintiff was adjudged a bankrupt. D. Gunasegeran, the bankruptcy officer gave evidence for the plaintiff and though he could not remember what advice he gave to the plaintiff yet he was emphatic that it was the practice of his office to explain the consequences to those who want to declare

themselves bankrupt. Since the plaintiff was a Government servant, the bankruptcy office prepared an interim report under para. 12(2) of the Public Officers (Conduct And Discipline) (Chapter "D") General Orders 1980 ("General Orders") to the plaintiff's Head of Department. It was also the practice of the bankruptcy office though not provided for in the Bankruptcy Act, 1967 (Act 360) to explain the implications of the General Orders to Government servants who were interested in declaring themselves bankrupt.

Briefly, those were the facts and, on those facts, the plaintiff received a letter to show cause from the Timbalan Setiausaha I of the Suruhanjaya Perkhidmatan Awan ("SPA" - the second defendant) dated 19 April 1988, to the effect that the SPA acting pursuant to the powers vested in them had decided to take disciplinary action against the plaintiff with a view to dismissal under the General Orders. In due course, the plaintiff was dismissed from Government service.

The plaintiff sued the defendants for the following reliefs (which were not happily worded in Malay):

1. Meskipun pengakuan pihak plaintif daripada Pejabat Penjara Taiping mengikut surat yang bertarikh 19 April 1988 tidak sah dan tidak diterima dan plaintif masih menjadi ketua Gudang Penjara dan mendapat hak ke atas semua gaji dan keuntungan yang diberikan sebagai ketua Gudang Penjara.
2. Pengakuan yang diberitahu kepada ketua jabatan tanpa hutang, dia tidak bercadang untuk prisiding dan diberhentikan.
3. Pengakuan dari Suruhanjaya Perkhidmatan Awam mengikut di bawah General Order dengan tiada bukti atau tidak sah atau tertunggak.
4. Penyiasatan untuk perbincangkan mengenai gaji dan faedah yang lain untuk plaintif.
5. Gantirugi.
6. Harga.
7. Dan lain-lain atau faedah yang diberikan oleh Yang Mulia Mahkamah Tinggi.

The show cause letter from the SPA dated 19 April 1988 (see pp. 1 to 3 of Bundle 'A') contained three charges and, for convenience, I reproduce them below:

Suruhanjaya Perhkidmatan Awam
Malaysia,
Tingkat 11, Wisma Keramat
Jalan Gurney,
Kuala Lumpur.

Telefon: 987144 samb.
Kawat:"Sercoms Kuala Lumpur"

Encik Ng Hock Cheng

Ruj Tuan:
Ruj Kami: SPA.SULIT. 17385/3/(5)
Tarikh: 19 April 1988
2 Ramadan 1408

Melalui:
dan
Salidan:

Ketua Pengarah Penjara Malaysia,
Ibu Pejabat Penjara,
Rukit Wira,
43000 Kajang

(U.P.: Y.B. Dato' Ibrahim bin Hj. Mohamed).

Tuan,

Kenyataan Alasan-alasan Membuang Kerja

Saya memaklumkan iaitu berikutan dengan laporan yang diterima, maka Suruhanjaya ini sebagai Pihak Berkuasa Tatatertib yang berkenaan telah membuat keputusan untuk mengambil tindakan tatatertib dengan tujuan buang kerja terhadap tuan di bawah Perintah Am 26, Perintah-perintah am Pegawai Awam (Kelakuan dan Tatatertib) (Bab 'D'), 1980 atas pertuduhan seperti berikut:

Pertuduhan Pertama:

Bahawa tuan, Ng Hock Cheng, Penyelenggara Stor Tingkatan Tinggi, Tempat Tahanan dan Pemulihan Taiping, Jabatan Penjara Malaysia, Taiping pada 17 Julai 1986 melalui No. 4596 dan 4719 Warta Kerajaan Persekutuan No. 15 Jld. 30 telah disytiharkan sebagain `Si Berhutang tidak berupaya membayar hutang' tuan sebanyak lebih kurang $331,225.25 dari "mereka-mereka/syarikat-syarikat kewangan" sepertimana yang ditunjukkan di Lampiran 'A'. Dengan pengisytiharan itu, tuan telah melanggar peruntukan di bawah Perintah Am 4(2)(d), 4(2)(g) dan 4(2)(i), Perintah-perintah Am Pegawai Awam (Kelakuan dan Tatatertib) (Bab 'D'), 1980 yang menyatakan bahawa tuan tidak boleh berkelakuan dengan sedemikian cara hingga menjatuhkan reputasi perkhidmatan awam atau menghilangkan kepercayaan terhadap perkhidmatan awam tuan, tidak bertanggungjawab dan ingkar perintah atau berkelakuan dengan apa-apa cara yang boleh ditafsirkan dengan munasabah sebagai ingkar perintah yang membolehkan tindakan tatatertib dengan tujuan buang kerja diambil terhadap tuan di bawah Perintah Am 26, Perintah-Perintah Am yang sama.

Pertuduhan Kedua:

Bahawa tuan, Ng Hock Cheng, Penyelenggara Stor Tingkatan Tinggi, Tempat Tahanan dan Pemulihan Taiping, Jabatan Penjara Malaysia, Taiping telah meminjam wang dari orang yang menjalankan perniagaan memberi pinjam wang pada tarikh dan Peminjam-Peminjam wang yang ditunjukkan di Lampiran 'B', walhal Perintah Am 10(1)(d), Perintah-perintah Am Pegawai Awam (Kelakuan dan Tatatertib) (Bab 'D'), 1980 tidak membenarkan tuan sebagai seorang kakitangan perkhidmatan awam untuk berbuat demikian. Perbuatan tuan itu adalah perbuatan yang melanggar Perintah Am 4(2)(g) dan 4(2)(i), Perintah-perintah Am Pegawai Awam (Kelakuan dan Tatatertib) (Bab 'D'), 1980 yang menyatakan bahawa tuan tidak boleh tidak bertanggung jawab dan ingkar perintah atau berkelakuan dengan apa-apa cara yang boleh ditafsikrkan dengan munasabah sebagai ingkar perintah yang membolehkan tindakan tatatertib dengan tujuan buang kerja diambil terhadap tuan di bawah Perintah Am 26, Perintah-perintah Am yang sama.

Pertuduhan ketiga:

Bahawa tuan, Ng Hock Cheng, Penyelenggara Stor Tingkatan Tinggi, Tempat Tahanan dan Pemulihan Taiping, Jabatan Penjara Malaysia, Taiping hanya melaporkan kepada Ketua Jabatan tuan bahawa tuan berada di dalam keadaan 'Kesusahan Berat Kerana Hutang' melalui surat tuan bertarikh 18 Mac 1986, walhal tuan telahpun berada di dalam 'Kesusahan Berat Kerana Hutang' sepertimana yang ditakrifkan di bawah Perintah Am 11(1)(a), Perintah-perintah Am Pegawai Awam (Kelakuan dan Tatatertib) (Bab 'D'), 1980 pada 31 Disember 1986 melalui pinjaman yang dibuat pada 'orang perseorangan/syarikat-syarikat' yang ditunjukkan di dalam Lampiran 'C'. Perbuatan tuan melengah-lengah melaporkan `kesusahan Berat Kerana Hutang' kepada Ketua Jabatan adalah perbuatan yang dianggap sebagai tidak jujur, tidak bertanggungjawab dan ingkar perintah atau berkelakuan dengan apa cara yang boleh ditafsirkan dengan munsabah sebagai ingkar perintah iaitu perbuatan yang bertentangan dengan Perintah Am 4(2)(f) dan 4(2)(g), Perintah-perintah Am Pegawai Awam (Kelakuan dan Tatatertib) (Bab 'D'), 1980 yang membolehkan tindakan tatatertib dengan tujuan buang kerja diambil terhadap tuan di bawah Perintah Am 26, Perintah-perintah Am yang sama.

2. Mengikut kehendak Perintah Am 26(2), Perintah-perintah Am Pegawai Awam (Kelakuan dan Tatatertib) (Bab 'D) 1980, tuan adalah diminta mengemukakan:

(a) Jawapan kepada pertuduhan ini; dan

(b) Hujah-hujah sebagai pembelaan diri mengapa tindakan tatatertib dengan tujuan buang kerja tidak boleh diambil terhadap tuan sekarang.

Jawapan dan hujah-hujah pembelaan diri tuan itu hendaklah dikemukakan kepada Setiausaha, Suruhanjaya Perkhidmatan Awam, melalui Ketua Jabatan tuan dalam tempoh dua puluh (20) hari daripada tarikh tuan menerima surat ini. Sekiranya tuan tidak memberi sebarang jawapan dalam tempoh masa yang ditetapkan itu, tuan akan dianggap sebagai tidak hendak mengemukakan sebarang pembelaan diri dan perkara ini akan diputuskan atas keterangan-keterangan yang ada sekarang ini sahaja.

3. Sila tuan akui penerimaan surat ini.

"Berkhidmat Untuk Negara"

Saya yang menurut perintah,

t.t.
(Kamarudin Bin Idris)
Timbalan Setiausaha I,
b.p. Suruhanjaya Perkhidmatan Awam,
Malaysia.

FD/zb/sri.

The last paragraph of this show cause letter gave the opportunity to the plaintiff, within a period of twenty days from the receipt thereof, to reply to the SPA through his Head of Department enclosing the answers and the defence submissions upon which he relied to exculpate himself. It was further stated in that last paragraph that in the event that no representation was received within the specified time, SPA would then proceed to consider taking further action to dismiss the plaintiff on the evidence available to them.

The plaintiff acknowledged receipt of the show cause letter by signing an acknowledgement letter dated 26 May 1988 witnessed by two persons (see p. 10 of Bundle 'B'). This acknowledgement letter would demolish the plaintiff's allegation that he did not receive the show cause letter.

By letter dated 8 June 1988, the plaintiff made a lengthy written representation (see pp. 8, 9, 10 and 11 of Bundle 'A') where he admitted the first and the second charges and sought to explain the third charge by giving his own version, which on analysis amounted to an admission that there was a delay in informing his superior about his serious pecuniary indebtedness and further he admitted that he had on his own volition declared himself a bankrupt. The plaintiff too proceeded in that letter to set out the reasons as to why he should not be dismissed. He implored and in fact threw himself at the mercy of the SPA to impose a lighter sentence bearing in mind several factors (see p. 10 of Bundle 'A'), *viz*:

(i) Pertuduhan yang dibuat terhadap saya adalah semata-mata mengenai satu perkara, iaitu 'hutang';

(ii) Di dalam tempoh perkhidmatan saya dengan Kerajaan selama lebih daripada 28 tahun, saya tidak pernah melakukan apa-apa perbuatan jenayah;

(iii) Saya tidak pernah melanggar mana-mana peruntukan tatakelakuan sebelum ini;

(iv) Walaupun saya menanggung banyak hutang, mutu dan prestasi perkhidmatan saya tidak terjejas;

(v) Pinjaman-pinjaman yang saya ambil bukan untuk tujuan berpoya-poya atau berlagak tetapi semata-mata untuk membantu bapa saya dalam perniagaannya yang mana telah mengalami kerugian yang teruk dengan wujudnya 'zaman kemelesetan' yang berlaku di seluruh dunia;

(vi) Gaji dan elaun bulanan saya adalah sebanyak RM480 dan pada masa ini potongan-potongan adalah seperti berikut;

RM544.46	-	Pinjaman Perumahan
RM200	-	Bayaran hutang melalui Pejabat Pegawai Pemegang Harta, Perak
RM120	-	Cukai pendapatan.

(vii) Perkhidmatan saya dengan Kerajaan telah melebihi 28 tahun dan saya akan bersara dalam beberapa tahun lagi;

(viii) Jika saya dibenarkan berkhidmat seterusnya dengan Kerajaan, maka hutang pinjaman perumahan Kerajaan dapat saya bayar balik setiap bulan melalui potongan gagi dan pencen.

Finally, in that letter the plaintiff craved that he be given a last chance to continue to serve the Government without promotion and he promised not to breach any disciplinary provisions in the future.

The SPA deliberated and took into account the plaintiff's letter dated 8 June 1988 and, consequently dismissed the plaintiff from Government service. The dismissal letter was addressed to the plaintiff through his Head of Department and it reads as follows (see p. 12 of Bundle 'A'):

Suruhanjaya Perkhidmatan Awam
Malaysia,
Jalan Cendrasari (Young),
Kuala Lumpur.

Telefon: 988222 Samb.
Kawat:"SERCOMS KUALA LUMPUR"

Ruj.Tuan: SPA.Sulit.17385/3/(15)
Tarikh: 9 September 1988
27 Muharam 1409

Encik Ng Hock Cheng,

Melalui:
dan
Salinan:

Ketua Pengarah Penjara,
Ibu Pejabat Penjara Malaysia,
Bukit Wira,
Beg Berkunci 212,
43000 Kajang,
Selangor Darul Ehsan

Tuan,

Keputusan Tindakan Tatatertib
Suruhanjaya Perkhidmatan Awam

Saya diarah menarik perhatian kepada surat Suruhanjaya ini SPA.Sulit.17385/3/(5) bertarikh 19 April 1988 meminta tuan mengemukakan hujah-hujah bagi membebaskan diri tuan daripada tindakan tatatertib di bawah Perintah Am 26, Perintah-perintah Am Pegawai Awam (Kelakuan dan Tatatertib) (Bab 'D'), 1980. Tuan telah mengemukakan jawapan sebagai pembelaan diri melalui surat tuan bertarikh 8 Jun 1988.

2. Dimaklumkan bahawa Suruhanjaya Perkhidmatan Awam dalam Mesyuratnya yang ke-1519 pada 29 Ogos 1988 setelah menimbangkan dengan teliti kes tuan itu pada keseluruhannya telah memutuskan bahawa tuan dikenakan hukuman buang kerja berkuatkuasa dengan serta-merta.

3. Oleh yang demikian tuan dikenakan hukuman buang kerja berkuatkuasa dengan serta-merta.

"Berkhidmat Untuk Negara"

Saya yang menurut perintah,

t.t.
(Farizan Bin Darus)
Bahagian Naik Pangkat/Tatatertib,
b.p. Setiausaha,
Suruhanjaya Perkhidmatan Awam,
Malaysia.

s.k.

Tuan Haji Nik Ariffin bin Haji Nik Omar,
Ketua Pengarah Penjara,
Ibu Pejabat Penjara Malaysia,
Bukit Wira,
Beg Berkunci 212,
43000 Kajang,
Selangor Darul Ehsan

Being dissatisfied, the plaintiff by letter dated 12 February 1989 responded to the SPA and explained in great detail the three charges levied against him (see pp. 13, 14, 15, 16, 17, 18, 19 and 20 of Bundle 'A'). This letter merely admits to the three charges levied against the plaintiff and it amounts to no more than an appeal for re-instatement.

The SPA being sensitive to the plaintiff's predicament, convened another meeting on the appeal lodged by the plaintiff particularly taking into account the letter dated 12 February 1989 and concluded that the dismissal ought to stand. By letter dated 13 May 1989, the SPA wrote to the plaintiff in the following words (see p. 24 of Bundle 'A'):

Suruhanjaya Perkhidmatan
Awam Malaysia,
Bahagian Naik Pangkat/
Tatatyertib, Tingkat 18,
Bangunan Perangsang Segemal,
Jalan Kampung Attap,
50520 Kuala Lumpur.

Telefon: 988222/988368 samb.
Kawat: :"SERCOMS KUALA LUMPUR"

Ruj.Tuan:
Ruj. Kami: SPA.Sulit. 17385/3/(25)
Tarikh: 13 Mei 1989
Syawal 1409

En. Ng Hock Cheng,
No. 69 Taman Taiping,
34600 Taiping,
Perak Darul Ridzuan.

Tuan,

Keputusan Tatatertib Suruhanjaya Perkhidmatan Awam

Saya diarah menarik perhatian kepada surat tuan bertarikh 12 Februari 1989 berkenaan dengan rayuan tuan terhadap keputusan tatatertib Suruhanjaya yang mengenakan hukuman buang kerja berkuatkuasa dengan serta-merta.

2. Dimaklumkan bahawa Suruhanjaya Perkhidmatan Awam dalam mesyuratnya yang ke-1547 pada 17 April 1989 setelah menimbangkan dengan teliti rayuan tuan itu pada keseluruhannya telah memutuskan bahawa keputusan Mesyuarat Suruhanjaya yang ke-1519 pada 29 Ogos 1988 dikekalkan.

3. Oleh yang demikian keputusan buang kerja terhadap tuan dikekalkan.

"Berkhidmat Untuk Negara"

Saya yang menurut perintah,

t.t.
(Roslee Bin Annuar)
Bahagian Naik Pangkat/Tatatertib,
b.p. Setiausaha,
Suruhanjaya Perkhidmatan Awam,
Malaysia.

Salinan Kepada:

Ketua Pengarah Penjara,
Ibu Pejabat Penjara,
Bukit Wira,
Beg Berkunci 212,
43000 Kajang,
Selangor Darul Ehsan

Ketua Setiausaha,
Perbendaharaan Malaysia,
Bahagian Pinjaman Perumahan,
Tingkat 9-11 Blok 8,
Kompleks Pejabat Kerajaan,
Jalan Duta,
Kuala Lumpur

Penolong Pegawai Pemegang Harta,
Pejabat Pemegang Harta,
No. 75A-77A Jalan Dato Onn Jaafar,
30330 Ipoh,
Perak Darul Ridzuan

Ha/zb

Tuan Haji Zainol Rashid bin Hussain, the Senior Federal Counsel acting for the defendants in his cross-examination of the plaintiff established a rather crucial point and this was the admission by the plaintiff that the SPA had followed all the procedures and gave him an opportunity to reply to all the charges levied against him. The plaintiff agreed that he reported a debt to the tune of RM331,225.25. The plaintiff also agreed that after deductions of the

permissible loans under the General Orders (like Government housing loan), his debts exceeded more than two months of his salaries. He agreed and reiterated that the SPA had followed all the procedures before dismissing him and, of importance, the plaintiff further agreed that the SPA did not infringe any of his rights (presumably under doctrine of natural justice) and that his dismissal was done *bona fide*.

Mr. Sri A. Selvarajah submitted on behalf of the plaintiff and argued that the SPA's dismissal of the plaintiff was wrongful, unreasonable and unjustified and sought to rely on *Bolton v. Law Society* [1994] 1 WLR 512 for the proposition that the High Court has the power to interfere, in a very strong case, the sentence imposed by the SPA. In *Bolton's* case, there was a complaint by the Solicitors Complaints Bureau of professional misconduct against the solicitor (Andrew John Bolton) for misappropriation of funds. The Solicitors Disciplinary Tribunal heard that complaint and found the allegations to have been substantiated and directed that the solicitor be suspended from practice for a period of two years. By a notice of motion, the solicitor applied by way of an appeal to the Divisional Court where fresh evidence of good character in mitigation of sentence was advanced. The Divisional Court concluded that in view of the fresh evidence and since there had been no finding of dishonesty, the penalty of suspension was quashed and in substitution a fine was imposed. The Law Society appealed to the Court of Appeal where it was held that since a professional disciplinary tribunal was the body best fitted to assess the seriousness of professional misconduct, an appellate Court should not, save in a very strong case, interfere with its sentence: that the Solicitors Disciplinary Tribunal's orders were not primarily directed to punishment but to the maintenance of a well-founded public confidence in the trustworthiness of all members of the profession and the discharge of any professional duty with less than complete integrity would attract severe sanctions: that in consequence considerations in mitigation of sentence had less effect than in the exercise of a criminal jurisdiction and an order of suspension which was otherwise appropriate was, therefore, not objectionable on the ground that the solicitor would subsequently be unable to re-establish his practice: that since the tribunal's decision was reached in full awareness of the solicitor's honesty and of the consequences of an order of suspension, since it had regarded his conduct as very serious and since limited weight attached to factors raised in mitigation the tribunal would not have imposed a fine even if the fresh evidence had been before it and, accordingly, the Divisional Court had erred in interfering with the decision of the tribunal. But, dismissing the appeal, the Court of Appeal was of the view that having regard to the lapse of time and to the stay of the tribunal's order pending determination of the appeal it would be oppressive to reinstate the order for suspension.

Applying *Bolton's* case, Counsel for the plaintiff argued that Dato Ibrahim gave evidence of the impeccable conduct of the plaintiff who had with diligence rose up the hierarchy in the Government service; that the plaintiff's character had not been impeached or tarnished in any way; that the plaintiff had financial difficulties and sought the advice of Dato Ibrahim; that the plaintiff did not squander any money nor led an immoral life; and, finally, that the plaintiff merely assisted his late father by borrowing from creditors and by divulging to Dato Ibrahim in regard to his financial standing the plaintiff had complied with para. 11(5) of the General Orders in that he had reported his serious indebtedness. It was submitted that all these factors should be taken cumulatively and they would form a very strong case for this Court to interfere with the order of dismissal imposed by the SPA. This submission overlooked the fact that the SPA had in their deliberations on two occasions considered the lengthy written representation dated 8 June 1988 and the letter of appeal dated 12 February 1989 where the plaintiff poured out his grievances and pleaded for mercy. *Bolton's* case cannot

be used as a *carte blanche* to interfere with the sentence of an inferior tribunal as the facts here are poles apart from that of *Bolton*. In *Bolton's* case, a solicitor had misappropriated funds of a Building Society whereas, here, the plaintiff as a Government servant borrowed massively and was indebted and failed to report his actual indebtedness to Dato Ibrahim and, on his own volition, had himself declared a bankrupt, a conduct which would bring the public service into disrepute and in breach of para. 4(2)(d), 4(2)(g), 4(2)(f) and 4(2)(i) of the General Orders. It is pertinent to point out that the plaintiff like any other Government officer is governed by the General Orders.

It was next argued that the SPA should have given the plaintiff the opportunity to explain as to why the extreme punishment of dismissal should not be levied. This argument clearly reflects the inability of Counsel for the plaintiff to follow the proceedings in Bahasa Malaysia and his inability to comprehend the show cause letter from the SPA dated 19 April 1988 drafted in perfect Bahasa Malaysia. That show cause letter gave ample opportunity for the plaintiff to exculpate himself from the charges. If what is meant by Counsel for the plaintiff is that the plaintiff ought to be given the right to be heard orally when he submitted that the plaintiff was not given the opportunity to explain to the SPA, then I am afraid Counsel has fallen into a trap. The words "reasonable opportunity of being heard" in the context of the rules of natural justice or in the context of para. 23 of the General Orders or in the context of Art. 135(2) of the Federal Constitution do not give the right to the plaintiff to be heard orally (*Local Government Board v. Arlidge* [1915] AC 120, *Kavanagh v. Chief Constable of Devon & Anor*. [1974] 1 QR 624, *Jeff v. New Zealand Diary Productions and Marketing Board* [1967] 1 AC 551, *Najar Singh v. Government of Malaysia* [1974] 1 MLJ 138 & [1974] 1 MLJ 138 & [1976] 1 MLJ 203 (decision of the Privy Council) and *Attorney-General v. Ryan* [1980] AC 718). There is no evidence here at all that the plaintiff demanded an oral hearing before he was dismissed by the SPA. The plaintiff's two letters to the SPA as adverted to earlier did not demand an oral hearing and if that was what he wanted, then perhaps there is cause for concern. Even Counsel for the plaintiff agreed in his submission that the SPA had adopted the correct procedures when dismissing the plaintiff and, accordingly I have no choice but to dismiss the plaintiff's case with costs. By way of a postscript, I have taken the liberty to touch on Art. 135 of the Federal Constitution even though the plaintiff did not raise it at all in the course of giving evidence before me. This must surely be due to the neglect of Counsel that handled this case. Paragraph 10 of the statement of claim spoke of Art. 135(1) of the Federal Constitution yet Counsel for the plaintiff did not lead evidence in that direction. The sanctity of sticking to one's pleadings is obviously not observed by the plaintiff and this should be held adversely against him.

This case demonstrates the need to have the *audi alteram partem* rule (hear the other side). It is fundamental to fair procedure that both sides should be heard. Lord Denning in *Surinder Singh Kanda v. Government of the Federation of Malaya [1962] MLJ 169* had this to say:

> If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him; and then he must be given a fair opportunity to correct or contradict them.

In the same vein, Lord Morris in *Ridge v. Baldwin [1964] AC 40* said:

> It is well established that the essential requirements of natural justice at least include that before some one is condemned he is to have an opportunity of defending himself, and in order that he may do so that he is to be made aware of the charges or allegations or suggestions which he has to meet.

The defendants here have done just that. The charges were conveyed to the plaintiff and the plaintiff was afforded the right to reply in writing and after having deliberated on that reply the defendants decided to dismiss the plaintiff. This was not the only opportunity afforded to the plaintiff. The second opportunity (the second bite of the cherry, so to speak) was when the plaintiff once again wrote a long appeal letter and this letter was tabled before the defendants and a second deliberation took place which ultimately confirmed the dismissal of the plaintiff. In short, both sides were heard.

Plaintiff's case dismissed with costs.